IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3736 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GITABEN W/OF SURESHBHAI BABUBHAI RATHOD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenue, a lady, has challenged her detention order dated 8.3.2004. By the impugned order, the petitioner-detenue

is detained as a 'bootlegger', under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenue was also served with the grounds of detention. In the grounds of detention, there is a reference about five criminal cases registered against the petitioner under the Bombay Prohibition Act. All these cases are in connection with dealing in country liquor.

The authority, after taking into consideration the aforesaid cases, detained the petitioner under PASA. The Authority has not recorded statements of any of the witnesses, and the sole basis for passing the detention order is the registered cases. It is the aforesaid order which is impugned in this petition.

The learned Advocate for the petitioner submitted that there is nothing on record for coming to the conclusion that the petitioner has violated public order, as the Authority has not recorded statements of any of the witnesses. It is submitted that the cases under the Prohibition Act can be dealt with under ordinary criminal law and it cannot be said that the petitioner has violated public order.

It is next argued by the learned Advocate for the petitioner that, against the detention order, the petitioner made a representation on 19th March, 2004 and the said representation was decided by the State Government on 31st March, 2004. It is, therefore, submitted that there is a delay in deciding the representation at the end of the State Government.

The learned AGP submitted that the detaining authority received the representation on 22nd March, 2004 and it was forwarded to the State Government on 23rd March, 2004. However, the learned AGP is not aware as to when the State Government received the said representation and when the representation was disposed of. The delay is unexplained and no affidavit-in-reply is also filed by the respondents. Since the averments remain uncontroverted in this behalf for want of reply, on the ground of delay in deciding the representation, the petition is required to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless she is required in connection with any other case. Rule is made absolute.

At this stage the learned Advocate for the petitioner-detenue, submitted that the petitioner will not enter Olpad Town upto 31st October, 2004. This voluntary statement is recorded. It is for the authority to monitor the same.

17th August, 2004 (P.B. Majmudar, J.)

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(apj)